Supreme Court, U. S
FILED
AUG 2 19
MICHAEL RODAK, JR.

IN THE SUPREME COURT FOR THE

UNITED STATES

October Term, 1976

No. 76-147

JOHN WILLIAMS, JR.,

PETITIONER

VS.

STATE OF MARYLAND,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF MARYLAND

Edward Turner
109 Lawyers Row
Centreville,
Maryland 21617

For Petitioner

INDEX

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED.	3
STATEMENT.	4
REASONS FOR GRANTING THIS WRIT	8
CONCLUSION	11

TABLE OF CITATIONS

Cases

Bailey v. State, 16 Md. App. 83, 95, 294 A.2d 123 (1972)	6
City of Greenwood, Miss. v. Peacock, 384 U. S. 808, 86 S. Ct. 1800, 16 L. Ed. 2d 944.	10
Kucharczyk v. State, 235 Md. 334, 201 A.2d 683	6
Thompson v. City of Louisville, 362 U.S. 199, 80 S. Ct. 624, 4L. Ed. 2d 654 . . .	10

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1976

No._____

John Williams, Jr., Petitioner

vs.

State of Maryland, Respondent

: : : : : : :

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

John Williams, Jr., the Petitioner herein, prays that a Writ of Certiorari issue to review the Order of the Court of Appeals of Maryland entered in the above entitled case on May 5, 1976. The said Order denied a request for review by certiorari of the decision of the Court of Special Appeals of Maryland (September Term, 1975, No. 652, filed February 11, 1976, per curiam) in the above entitled cause.

Opinions Below

The Order of the Court of Appeals of Maryland is printed in Appendix A hereto, infra, page 1. The per curiam opinion of the Court of Special Appeals of Maryland is printed in Appendix A hereto, infra, page 2 . The Docket Entry of Judgment of the Circuit Court for Queen Anne's County is printed in Appendix A hereto, infra, page 10.

Jurisdiction

The judgment of the Court of Appeals of Maryland was entered on May 5, 1976. The jurisdiction of this Court is invoked under Rule 19 of the Rules of the Supreme Court of the United States in that the Court of Appeals of Maryland by refusing to review the decision of the Court of Special Appeals of Maryland has sanctioned a departure by the lower court from the accepted and usual course of judicial proceedings in Maryland and has, in effect,

decided an important state question in conflict with the applicable state law. The jurisdiction of the Court is also invoked under the Fourteenth Amendment to the United States Constitution as the action of the Maryland Court of Appeals in denying the Petition for Certiorari to the judgment of the Maryland Court of Special Appeals had the effect of making valid a finding of guilty upon insufficient and contradictory evidence and thus deprived the Petitioner of his liberty without due process of law and, further has denied to him the equal protection of the laws.

Questions Presented

1) Was the evidence produced at trial, under the Maryland law relating to sufficiency of evidence and contradictory evidence, sufficient to support the lower court's judgment?

2) Was the finding of guilty made by the trial court a denial of due process of the law?

3) Was the finding of guilty made by the trial court a denial of equal protection?

Statement

Your Petitioner was the Defendant in a criminal proceeding before the Circuit Court for Queen Anne's County, Judge James A. Wise presiding without a jury. An appeal was filed from a conviction of larceny, challenging the sufficiency of the evidence. On appeal to the Court of Special Appeals of Maryland, the judgment of the Circuit Court was affirmed. A petition for Writ of Certiorari was denied by the Maryland Court of Appeals.

Trial was held on April 10, 1975. At trial, four witnesses were called by the State. The crucial testimony, i.e., the testimony from which the Court drew the inference of facts needed to be proved in order to be convinced, beyond a reasonable doubt, of the defendant's guilt, was delivered by Ernest Clark, Jr., a

mechanic for Delmarva Power and Light Company (Delmarva).

Mr. Clark testified that on April 24, 1974, he arrived at the Delmarva Yard at approximately 10:00 A.M., and that as he was pulling into the yard, he noticed a red truck with copper wire in the back. He further testified that just as he was getting out of his truck, the other truck pulled out. He stated that the truck had three occupants, "three black men", but apart from this observation, he was unable to identify them. Clark also stated that Trooper Richardson of the Maryland State Police came by the shop later that day with a truck which Clark identified as the one which he saw leaving the Delmarva yard earlier. He further testified that Richardson had three men in custody at the time but that he (Clark) was unable to make an identification of these individuals.

It was from this scenario, and Mr. Clark's

identification of the truck, that the trier of fact was able to draw a rational inference of facts which convinced him of this Petitioner's guilt beyond a reasonable doubt. It is the contention of the Petitioner in this proceeding that Clark's testimony was so contradictory that it had no probative value and therefore, under Kucharczyk v. State, 235 Md. 334, 201 A.2d 683, could not be used as a basis for the verdict.

That the Court of Special Appeals erred in its decision on this case is clear from its per curiam opinion appended hereto. At page 4 of that opinion, the Court states that "the Kucharczyk doctrine applies to unresolved contradictions within a single witness's trial testimony as to the central issue of the case. Bailey v. State, 16 Md. App. 83, 95, 294 A.2d 123 (1972). It does not apply to cases like the one at bar where the contradictions are in the testimony of different witnesses". The

Petitioner's contention, it seems clear, was misunderstood by the Court of Special Appeals. The unresolved contradictions, so as to make Kucharczyk applicable, were in the testimony of a single witness (Clark) and related to the central issue of the case (identification of the truck, without which no factual inference could be drawn).

When asked by the State's Attorney to describe the truck, Mr. Clark stated that "it was, oh, I would say a '68 or '69 Ford one-ton red". Mr. Clark was then asked if it was a stake-body truck. He replied, "I think you've got me on that . . ." Yet later when asked by defense counsel how he was able to identify this particular truck, Clark cited "the chrome, emblems on the hood that stuck out and the stake body" (emphasis added).

Other inconsistencies abound in Mr. Clark's testimony. For example, at one point he stated that someone else called the State Police.

Later he was asked, "You said when you (emphasis added) called the police barracks to give the information about the crime the truck was described, is that right, sir? Answer: Yes, sir".

The trial judge in this case was not faced with the normal matters of credibility of witnesses or weight of the evidence. Rather, he based his finding (that the circumstances showed beyond a reasonable doubt that the Petitioner was in the truck when it was used in the larceny) solely upon the contradictory testimony of State witness Clark.

REASONS FOR GRANTING THIS WRIT

The decision of the Trial Court in this case was clearly against the weight of all authority in Maryland relating to sufficiency of evidence and contradictory testimony, factors which are crucial to every trial situation. The inherent capability of every trier of fact to assess credibility and determine the weight to be given to each bit of testimony, within the

parameters of discretion enunciated in the preceding cited cases, is not questioned. At issue rather are those parameters of discretion themselves and the right of every criminal defendant to rely, with some certainty, upon a fair and uniform application of these rules.

The gloss placed upon the trial court's determination by the Court of Special Appeals of Maryland and seemingly so readily upheld by the Court of Appeals, i.e., that "it was a matter for the finder of fact to take the contradictions or equivocations properly into account", Appendix A, infra, page 9, begs the issue. What must be determined is whether the guidelines as set out by the Maryland Appellate Courts in Kucharczyk, supra, and Bailey, supra, within which the finder of fact ostensibly is to exercise his discretion are still applicable and whether a criminal defendant may rightfully rely upon the Maryland Appellate Court's prior decisions to

bind the Trial Court in such an exercise.

The failure of the Appellate Courts of Maryland to require a strict adherence to their own rules by the Trial Courts would seem to present a primae facie violation of the Fourteenth Amendment. If the strictures of Kucharczyk and Bailey, supra, have not been overruled, then the Petitioner was convicted and punished without evidence of his guilt. That this is violative of due process is without question. Thompson v. City of Louisville, 362 U. S. 199, 80 S. Ct. 624, 4L. Ed. 2d 654; City of Greenwood, Miss. v. Peacock, 384 U. S. 808, 86 S. Ct. 1800, 16 L. Ed. 2d 944. If, however, the Maryland rule is now that contradictory statements of a single witness as to the central issue of a case may now be resolved by the trier of fact and determined as probative on one or the other possible versions, the failure to note this by the Maryland Courts seems equally at odds with the guarantees of

the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted;

EDWARD TURNER
Counsel for Petitioner
109 Lawyers Row
Centreville, Maryland 21617
Telephone: 758-1795

APPENDIX A

ORDER OF COURT OF APPEALS

JOHN WILLIAMS, JR.	:	IN THE
	:	COURT OF APPEALS
	:	OF
V.		
	:	MARYLAND
	:	Petition Docket No. 1 September Term, 1976
STATE OF MARYLAND	:	(No. 652, September Term, 1975 Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the said petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

Court Seal Here

(s) Robert C. Murphy
Chief Judge

Date: May 5, 1976.

PER CURIAM OPINION OF COURT OF SPECIAL APPEALS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 652

September Term, 1975

JOHN WILLIAMS, JR.

v.

STATE OF MARYLAND

Thompson
Moylan
Menchine
Lowe,

JJ.

PER CURIAM

Filed: February 11, 1976

John Williams. Jr., the appellant, was convicted in the Circuit Court for Queen Anne's County, Judge James A. Wise presiding without a jury, of larceny and sentenced to eight

years. On appeal Williams challenges the sufficiency of the evidence.

Ernest D. Clark, Jr., a mechanic for Delmarva Power and Light Company, testified that he arrived on the company grounds in Queen Anne's County at approximately 10:00 a.m. on October 24, 1974. As he entered an enclosed lot adjacent to the garage, he noticed a '68 or '69 Ford, one-ton, red truck, which was distinguishable because "it had chrome emblems all over the hood!"[1] Two black men were standing in the back of the truck, and a third black man, who did not belong in the company office, was hurrying out of the garage. After Clark had entered the garage, he noticed coils of wire in the back of the truck. He then checked inside the garage to see if anyone was authorized to receive any equipment. By the time Clark returned outside, the truck, the wire, and the three men were gone. He and

---

[1] Our examination of the photographs of the truck, which were introduced into evidence, substantiates the unusual nature of emblems.

another man checked the premises to ascertain what was missing while a third person called the police. They found wire which had been dragged across the floor and several coils leaning against and inside a garbage container. Approximately forty-five minutes later Trooper Richardson arrived at the company with the truck and three men in his custody. Clark positively identified the truck as the same one he had seen earlier that morning, but could not identify the three men. Philip C. Wheatley, an engineer's helper for Delmarva Power and Light Company, testified that after Clark had come into his office on the morning of October 24, 1974, he called the police. He told the police that a truck, which he did not describe, had been in the company yard, that they were missing some copper wire, and that wire had been dragged across the storeroom and garage floor. Following his call to the police, Wheatley inventoried the copper wire on the premises and determined that roughly

$800.00 worth of wire was missing. In November of 1974, Wheatley went to the State Police Barracks in Centreville, where he identified several coils of wire as belonging to Delmarva Power and Light Co. This wire was valued at roughly $200.

Daniel J. Jonczak, a retired Baltimore City police officer, testified that sometime in the third week of October of 1974, he observed three colored males unloading wire from a dark maroon, one-ton, wood stake truck with emblems on the hood into a lot off of Jackson's Creek Road approximately one mile from the Delmarva office. Seven or eight days later Jonczak informed the police of the location of the wire.

Trooper First Class David T. Richardson testified that at 11:25 a.m. on October 24, 1974, he was advised by a police radio broadcast "to be on the lookout for a '72 or '73, one-ton Ford pickup truck, red in color with a wooden stake body operated by three colored males. The truck was customized, and attempt to locate the

truck as it was allegedly in a larceny of a large amount of wire from Delmarva Power and Light at Grasonville." Several minutes later, he observed a truck meeting this description cross the Kent Narrows Bridge in a westerly direction. The officer stopped this truck which was being operated by the appellant. No copper wire was in the truck, but a large number of copper strands and some copper flaking were visible. During this detention, it was determined through a check with the Department of Motor Vehicles that the appellant was the owner of the truck. The appellant and his two companions followed the trooper to Delmarva, where Ernest Clark identified the truck. The three men were then placed under arrest and transported to the Maryland States Police Post in Centreville. On November 9, 1974, Trooper Richardson went to Jackson's Creek Road where he received four or five rolls of copper wire encased in black rubber and marked with yellow paint. This wire was later turned

over to Mr. Wheatley.

The corpus delicti of larceny was clearly proven here upon a showing that copper wire belonging to Delmarva Power and Light Company was removed from the premises in a truck by unauthorized persons with the obvious intent to deprive the company of its right of ownership. With respect to the criminal agency of the appellant, the evidence is entirely circumstantial. Circumstantial evidence, however, is sufficient to support a conviction provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the appellant's guilt. Williams v. State, 22 Md. App. 714, 721, 325 A. 2d 427 (1974). There was testimony on the record that a unique looking truck was used by three black men in perpetration of the crime in question. A similarly described truck was seen a mile from the scene of the crime unloading the wire. Within a short time period

after the crime the appellant's truck, meeting the description broadcast over the radio as the one used in the larceny, was stopped and copper wire strands were found in the back. It was identified as the truck used in the larceny. As in all cases tried without a jury, credibility of the witnesses and weight of the evidence were matters for the trial judge. We do not view his finding that these circumstances showed beyond a reasonable doubt that the appellant was in his truck when it was used in the larceny as clearly erroneous. Md. Rule 1086.

Appellant, citing Kucharczyk v. State, 235 Md. 334, 201 A. 2d 683 (1964), further contends that contradictions in the testimony of the State's witnesses were so great that it should have been rejected by the court because of a lack of any probative force. Obviously there were contradictions in the testimony of the State's witnesses. Clark described the truck as a '68 or '69 red truck. Jonczak believed it to be dark ma-

roon in color. Trooper Richardson testified that the truck was described over the police radio as a '72 or '73 red truck, but Wheatley stated that he had not described the truck to the police.

The Kucharczyk doctrine applies to unresolved contradictions within a single witness's trial testimony as to the central issue of the case. Bailey v. State, 16 Md. App. 83, 95, 294 A. 2d 123 (1972). It does not apply to cases like the one at bar where the contradictions are in the testimony of different witnesses. In this case, it was a matter for the finder of fact to take the contradictions or equivocations properly into account and then to make informed judgment in assessing a witness's credibility and in weighing that witness's testimony. It was not a matter calling for the exclusion of contradictory testimony. Bailey, supra at 97.

JUDGMENT AFFIRMED
COSTS TO BE PAID BY APPELLANT

DOCKET ENTRY OF JUDGMENT OF
CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

STATE OF MARYLAND

VS

JOHN WILLIAMS, JR.
1907 East 31st Street
Baltimore, Maryland

CRIMINAL NO. 1561

STATE'S ATTORNEY

John T. Clark, III

DEFENSE COUNSEL

Edward Turner

1 - Filed Jan. 16, 1975. Original papers and certified copy of docket entries from District Court of Maryland for Queen Anne's County.

CHARGE IN ARREST WARRANT No. 0094 - Grand Larceny.

Full bail set at $5,000.00 - Surety - Allegheny Mutual Casualty Company - Herman Kimmelman, Attorney-in-Fact.

Election of Jury Trial. (Jan. 13, 1975)

2 - Filed Feb. 26, 1975. INFORMATION charging John Williams, Jr. with Steal, Take and Carry Away Personal Property being of the value of $100.00 and upwards. Copy mailed to Dist. Ct.

3 - Filed Feb. 26, 1975. Receipt acknowledging copy of Information.

Feb. 26, 1975. ARRAIGNMENT held before Judge James A. Wise. Mrs. Connie Bennett reporting. Mr. Edward Turner, Attorney for defendant agreed to have defendant arraigned on Information filed by State's Attorney and will file a Waiver of a Preliminary hearing before trial. Mr. Turner waived reading of Information. Defendant arraigned. Plea - Not Guilty. Election - Trial by Jury. Bail continued pending trial. Case set for April 10, 1975 at 9:45 A.M. by Jury.

4 - Filed April 10, 1975. Waiver and Request and certificate of service.

April 10, 1975. TRIAL held before Judge James A. Wise. Mrs. Connie Bennett reporting. Mr. Turner stated to the Court that the Defendant wished to

waive the right to a jury trial and elects to be tried by the Court and the plea of not guilty is to stand as entered. State waived opening statement. Mr. Turner reserved opening statement. State's witnesses were sworn and examined. At end of State's case Mr. Turner moved for judgment of acquittal and was heard on the motion. Motion denied by the Court. Defense did not present any evidence and at the end of the entire case Mr. Turner renewed the motion for judgment of acquittal. Motion again denied by the Court. Counsel argued before the Court. Court finds Defendant guilty beyond a reasonable doubt of the matters whereof he stands charged. Mr. Turner requested a pre-sentence investigation. State had no objection to a pre-sentence investigation if Defendant is incarcerated pending sentencing. Court rescinded bail. Court directed State to contact Division of Parole and Probation for investigation. Sentencing is set for May 6th at 9:30 A.M. Defendant re-

manded to the custody of Sheriff.

Report mailed to Division of Parole and Probation.

May 6, 1975. SENTENCING before Judge Wise. Mrs. Connie Bennett reporting. Edward Turner, Attorney for defendant was heard on the merits of the case. John T. Clark, III, Attorney for State was heard on sentencing. Court heard defense counsel. 5/6/75. It is the judgment and sentence of the Court, that as a punishment for your offense you, John Williams, Jr. will be committed to the jurisdiction of the Division of Correction for a period of eight (8) years from April 10, 1975. Court informed defendant of his constitutional rights. Mr. Turner requested that defendant be released on bail pending his appeal which he was going to take. State opposed bail or freedom pending appeal. Court granted that Bond of $5,000.00, which is still in effect from District Court, be continued. Commitment suspended until result of the appeal.

5 - Filed May 29, 1975. Order of Attorney for Defendant to enter an Appeal to the Court of Special Appeals of Maryland from the judgment and sentence in case and certificate of service.

6 - Filed June 25, 1975. Application to Extend Time for Transmitting Record to Court of Special Appeals of Maryland and certificate of service.

7 - Filed June 25, 1975. Order of Court extending time for transmitting the record to ninety (90) days from May 29, 1975.

8 - Filed August 25, 1975. Transcript of Testimony.

August 25, 1975. Original papers, testimony, exhibits and certified copy of docket entries mailed to the Court of Special Appeals by certified mail with return receipt.

March 16, 1976 - Mandate from Court of Special Appeals, No. 652, September Term, 1975. Judgment affirmed. Costs to be paid by the Appellant.

May 20, 1976 - Copy of Order from Court of Appeals denying petition for writ of certiorari filed.

STATE WITNESSES

James Leroy Hynson Issd.3/17/75sd.

Tfc. David T. Richardson Issd. 3/17/75sd.jt

Daniel J. Jonczak Issd. 3/17/75sd.jt

Ernest Duran Clark, Jr. Issd. 3/17/75sd.jt

Phillip Wheatley Issd. 4/3/75sd. jt

DEFENSE WITNESSES